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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14.12.2015

% **RSA 304/2015 and C.M. No.15423/2015**

ASHISH KUMAR

..... Appellant

Through: Mr. Anand Prakash, Advocate

versus

HARI KISHAN

..... Respondent

Through: Mr. Jasbir Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 11.03.2015 passed by the First Appellate Court, namely, ADJ-6, South Distt., New Delhi in RCA No.12/2015 preferred by the respondent/plaintiff, whereby the first appeal of the respondent/plaintiff has been allowed and the judgment and decree dated 12.02.2014 passed by the Trial Court, namely, Civil Judge-01 (South), Saket Courts, New Delhi dismissing the suit has

been set aside. The respondent/plaintiff had filed the suit to seek recovery of possession and pendentelite and future mesne profits against the appellant/defendant in respect of the suit property, i.e. first floor of property no.J-501, Dakshinpuri, New Delhi-110062.

2. The plaintiff claimed himself to be the owner of the suit property having purchased the same from the erstwhile owner/allottee, namely, Sh. Shiv Charan, s/o. Sh. Kishan Lal after execution of the relevant documents including receipt. The suit property comprises of four floors and admeasures 22 ½ sq. yds. The plaintiff stated in the year 1980, he permitted his younger brother Sh. Shyam Singh (since deceased), to stay in the property as a licensee. Later, his family also started living in the premises. The plaintiff claimed that the control and symbolic possession always remained with him and the electricity and water connection are in his name, which were also being paid by him alone. The plaintiff stated that he is a government servant and an allottee of government flat at Pushp Vihar. He filed the suit since his elder son was of marriageable age and all his children, i.e. three sons and one daughter were staying at the suit property. Since he needed the suit property for the growing needs of his family, he filed the suit as the defendant failed to vacate the premises despite request.

3. The appellant/defendants filed the written statement. Apart from raising preliminary objections with regard to limitation; jurisdiction of the court; valuation of the suit; non-joinder of DDA as a party; lack of cause of action and lack of locus standi of the plaintiff, on merits the case of the appellant/defendant was that the suit property was purchased from the funds of the mother of the plaintiff and late Sh. Shyam Singh, so that the same

could be enjoyed as a residence by both the plaintiff and the defendant. The defendant claimed that the suit property was a joint family property of the plaintiff and the defendant. The defendant claimed that late Sh. Shyam Singh was staying in the suit property since the date of its purchase. It was claimed that he is staying in the property as a matter of right and not upon grant of permission by the plaintiff. The defendant also claimed that late Sh. Shyam Singh contributed towards the purchase of the house and the income of late Sh. Shyam Singh was fivefold that of the plaintiff. The defendant also stated that they were sharing electricity and water connection charges with the plaintiff.

4. On the basis of the pleadings, the Trial Court framed the issues on 27.11.2010. The primary issues framed were as to whether the defendants were only licensee in the property, or they were co-owners of the suit property, and whether the same was a joint family property. The parties led their respective evidence. The plaintiff examined himself as PW-1. The plaintiff led in evidence, inter alia, the electricity bills as Ex. PW-1/3, sanction for sewer connection dated 07.05.1992 as Ex. PW-1/4, bill issued by DJB dated 10.11.2010 as Ex. PW-1/7, declaration cum undertaking dated 01.05.1978 as Ex. PW-1/7A and receipt dated 01.05.1978 as Ex. PW-1/7B.

5. On the other hand, the defendants examined themselves as DW-2 and DW-1 respectively, apart from examining one Sh. Kali Charan as DW-3. The defendants led in evidence, inter alia, the I-Card of late Sh. Shyam Singh.

6. The Trial Court dismissed the suit, primarily by deciding issue no.5—whether the plaintiff is the exclusive owner of the suit property against the plaintiff. The discussion found in the impugned judgment of the Trial Court on issue no.5 reads as follows:

“The onus to prove this issue lies on the plaintiff. In order to establish the same, the plaintiff himself stepped into witness box to depose that he is the absolute owner of the property. In documentary evidence the plaintiff relied upon the receipts of DESU dated 26.08.1981, Ex. PW-1/2, the electricity bill dated 21.12.2009, Ex. PW-1/3, sanction from MCD dated 07.05.1992, Ex PW-1/4 receipt of sewage dated 30.01.1992, Ex PW-1/5 and Ex PW-1/6 i.e. the water bill dated 10.11.2010. These documents are all in the name of Hari Kishan i.e. the plaintiff, however, just by having electricity and water connections in one’s name does not confer the title to the property. All these documents may establish possession, however, can not in any circumstances portray the title of the property. These documents do not establish that the plaintiff is the exclusive owner of the suit property”.

7. The First Appellate Court has, however, reversed the judgment and decree of the Trial Court. The First Appellate Court, on appreciation of evidence led by the parties, concluded that it was the plaintiff who had acquired the rights and interest in the suit property from the erstwhile owner Sh. Shiv Charan. The claim of the defendant that the mother and Shyam Singh had contributed towards the purchase of the suit property and that the same was a joint family property was unsubstantiated.

8. The defendants had not disputed the factum of purchase of the suit property in the year 1978. They also did not dispute the position that the

same was purchased in the name of the plaintiff. They also did not dispute the position that the “purchase” was made vide Ex. PW-1/7A, namely, the declaration cum undertaking dated 01.05.1978. The said document records delivery of possession by Shiv Charan to the plaintiff with all rights in the suit property.

9. The plea of the appellants/defendants that the plaintiff relied upon forged and fabricated documents was rejected by the First Appellate Court by observing that if the plaintiff had to file forged documents, he would not have filed the documents showing Chittarmal as one of the witnesses, who was admittedly a relative of the parties and had strained relation with the plaintiff. The First Appellate Court also took into account the other circumstances in favour of the plaintiff, such as the fact that the electricity connection, water connection and sewer connection in the suit property were all obtained in the name of the plaintiff. None was obtained in the name of Shyam Singh. No evidence had been led to prove that the suit property was acquired with common funds, much less a major contribution from the mother of the plaintiff and Shyam Singh, or Shyam Singh. There was no explanation that if funds were provided by the mother, Shyam Singh and the plaintiff, why the documents were prepared in the name of the plaintiff alone. The defence of co-ownership of the suit property by the plaintiff and Shyam Singh remained unsubstantiated by the defendants. The First Appellate Court, therefore, believed the case of the plaintiff that the suit property was acquired by the plaintiff. That being the position, the occupation of Shyam Singh could only be that of a licensee. Consequently, the First Appellate Court decreed the suit.

10. The submission of learned counsel for the appellant is that Ex. PW-1/7A, i.e. the declaration cum undertaking is not a document of transfer as it does not purport to be one. The same is also not stamped and registered and does not create a title in favour of the plaintiff. Learned counsel further submits that Shyam Singh, and thereafter his family, have been residing in the suit property for decades in their own right.

11. On the other hand, the respondent has supported the impugned judgment by pointing out the evidence led by the plaintiff. He submits that the plaintiff exercised the right of ownership over the suit property and the water and electricity connection were obtained by him and even the sanction of sewer connection was obtained by the plaintiff alone. It is further submitted that the declaration cum undertaking were also in the name of the respondent/plaintiff alone. Shyam Singh came into occupation through the plaintiff.

12. Having considered the submissions of the parties, perused the judgments of the courts below and the record relied upon by the parties, I am of the view that the appellants have failed to bring out any substantial question of law for consideration by this court in the present appeal. No doubt, there is no document of title in favour of the respondent/plaintiff vesting a perfect title in the plaintiff over the suit property. However, the aforesaid documents referred to and relied upon by the plaintiff would show that it was the plaintiff alone, who acquired interest in the suit property from the erstwhile owner Sh. Shiv Charan – whose title was not even disputed by the appellant/defendant. It has not been explained as to why Ex. PW-1/7A

and PW-1/7B were executed exclusively in the name of the plaintiff, and not in the name of the plaintiff, Shyam Singh and their mother, if all of them contributed to the purchase of the suit property. It has also not been established that contribution had been made by all three of them for acquisition of the property from the erstwhile owner, and not by the plaintiff alone. Not only this, even after acquisition, the electricity, water and sewer connection were obtained by the plaintiff in his own name alone, to the exclusion of Shyam Singh and the mother of the parties. At no stage, either the mother of the plaintiff or Shyam Singh sought amendment or correction of the name in the record of DESU/DVB or the DJB to incorporate the name of any other person.

13. As between the plaintiff and the defendants, it is clear that the respondent/plaintiff had a better title to the suit property than the defendant. The title claimed by the plaintiff not being absolute, the plaintiff may not be able to defend his claim to the suit property set up by a third party, who may show a better title. However, *inter partes*, it is clear that the evidence led by the plaintiff shows that the plaintiff had a better title to the suit property than the defendants. Moreover, it is evident that Sh. Shyam Singh came into occupation of the suit property through the plaintiff. It was the plaintiff who obtained the possessory title from the owner Sh. Shiv Charan. It is not the defendants case that Sh. Shyam Singh came into possession directly through the owner or through some other person. Therefore, neither he, nor his heirs can deny the claim of the plaintiff to the suit property.

14. For all the aforesaid reasons, I am of the view that the First Appellate Court has correctly decreed the suit of the respondent/plaintiff. Accordingly, the appeal is dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J

DECEMBER 14, 2015

Later on, Mr. Vinod Wadhwa, Advocate puts in appearance on behalf of the appellant after the order has been dictated, and he was apprised of the order passed.

VIPIN SANGHI, J

DECEMBER 14, 2015

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